

March 29, 1950

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ARIZONA ATTORNEY GENERAL

F. D. McMahon
State Veterinarian
Phoenix, Arizona

Dear Doctor McMahon:

This is in answer to your letter of March 14, 1950, wherein you ask if the following proposed regulation is or is not in conflict with existing laws. The proposed regulation is:

"In addition to existing regulations controlling the importation of dairy cattle into Arizona, all such shipments except officially vaccinated calves under 30 months of age and officially vaccinated adults meeting the requirements of this regulation and complying with present regulations, will be held under quarantine and sequestered from other cattle for a period of 30 days and retested for Brucellosis within that period at owner's expense unless other funds are available.

Officially vaccinated adults must present a copy of the official test made in a state recognized laboratory in state of origin within 10 days prior to date of vaccination, and must be vaccinated at least 30 days prior to date of entry into Arizona."

The general statement of limitations of administrative boards, such as the Live Stock Sanitary Board, is made in 42 Am. Jur., p. 316, Paragraph 26, as follows:

"Administrative boards, commissions, and officers have no common-law powers. Their powers are limited

by the statutes creating them to those conferred expressly or by necessary or fair implication. General language describing the powers and functions of an administrative body may be construed to extend no further than the specific duties and powers conferred in the same statute. In determining whether a board or commission has a certain power, the authority given should be liberally construed in light of the purposes for which it was created, and that which is incidentally necessary to a full exposition of the legislative intent should be upheld as being germane to the law. In the construction of a grant of powers, it is a general principle of law that where the end is required the appropriate means are given. Implication of necessary powers may be especially appropriate in the field of internal administration. However, powers should not be extended by implication beyond what may be necessary for their just and reasonable execution. Official powers cannot be merely assumed by administrative officers, nor can they be created by the courts in the proper exercise of their judicial functions.

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Section 50-960, ACA 1939, which is Section 6, Chapter 13, Session Laws of 1949, provides:

"Brucellosis control regulations.--
The livestock sanitary board shall enforce the provisions and regulations of this act."

The act referred to is what is commonly known as the "Brucellosis Act of 1949", and is now designated as Section 50-955 to Section 50-961, inclusive, ACA 1939.

Section 50-102 (c) 1, as amended, gives the Live Stock Sanitary Board the right by regulation "to protect the live stock industry from and prevent the spread of contagious or infectious diseases." Regarding this matter, then, the Live Stock Sanitary Board can only make regulations that will protect the live stock industry from and prevent the spread of contagious or infectious diseases. The Brucellosis Act does not require a waiting period before shipment within the State of Arizona of a vaccinated animal after vaccination nor does it make any specific requirement regarding the importation of milk animals into the state but does say, Section 50-959, regarding sale of milk animals, as follows:

"Dairy cattle or milk goats, except those sold in interstate commerce, sold for slaughter or originating in a state designated Brucellosis free herd or area in which there were no reactors on the last preceding test, shall, within thirty (30) days prior to the sale thereof, pass a negative Brucellosis test. Officially vaccinated dairy cattle or goats may be moved intrastate without such test."

Here the law specifically says that officially vaccinated dairy cattle or goats may be moved intrastate without such test. It is necessary therefore to refer to Section 50-102 (c) 1, supra, for an authority to make a regulation as you have suggested. We fail to see where the last line of the proposed regulation, to-wit: "and must be vaccinated at least 30 days prior to date of entry into Arizona", would tend in any manner to protect the live stock industry from and prevent the spread of contagious or infectious diseases. It appears to us that, taking into consideration the general statement of the law as quoted and the different sections herein referred to, the Live Stock Sanitary Board may adopt a regulation similar to the one presented, with the exception of the last line which we feel is an improper exercise of administrative powers of the Live Stock Sanitary Board.

F. D. McMahon
State Veterinarian

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We suggest that the proposed regulation be amended to read as follows:

"In addition to existing regulations controlling the importation of dairy cattle into Arizona, all such shipments, except officially vaccinated calves under 30 months of age and officially vaccinated adults meeting the requirements of this regulation and complying with present laws and regulations, will be held under quarantine and sequestered from other cattle for a period of 30 days and retested for Brucellosis within that period at owner's expense unless other funds are available.

Officially vaccinated adults must have with them a copy of the official Brucellosis test showing a negative reaction made in a state recognized laboratory in state of origin within ten days prior to date of vaccination."

It is our opinion that the Live Stock Sanitary Board may pass and put into effect the regulation as amended.

Very truly yours,

FRED O. WILSON
Attorney General

CHAS. ROGERS
Assistant Attorney General